

CRR-3795-2013

Date of Decision: 09.02.2024

Rajeev Kumar

.....Petitioner

Versus

Babu Ram and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Garvit Mittal, Advocate
for Mr. Ravinder Malik, Advocate for the petitioner

Mr. Gopal Sharma, Advocate
for respondents no. 1 to 3 (proceedings abated
with respect to respondent no. 1)

Mr. Vikas Bharadwaj, AAG, Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 08.08.2012 passed by learned Additional Sessions Judge, Yamunanagar at Jagadhri whereby the appeal against judgment of conviction dated 27.10.2010 passed by learned Judicial Magistrate Ist Class, Yamunangar at Jagadhri in FIR No. 238 dated 29.10.2004 under Sections 420, 467, 468, 471 of the IPC registered at Police Station Chhapar, was partly allowed and the respondents-accused were additionally convicted for commission of offence under Section 471 read with Section 34 of the IPC. Each of the respondents-accused were sentenced as under:-

Offence	Sentence
Section 471 read with Section 34 of the IPC	Rigorous imprisonment of 3 years and a fine of Rs. 2000/-, in default of which rigorous imprisonment of 3 months

Section 467 read with Section 34 of the IPC	Rigorous imprisonment of 3 years
Section 468 read with Section 34 of the IPC	Rigorous imprisonment of 1 year and a fine of Rs. 2000/-, in default of which rigorous imprisonment of 3 months

2. The facts, in brief, are that on 17.09.2004, the petitioner-complainant Rajiv Kumar contacted Halqa Patwari who informed him that the respondents-accused had mortgaged 24 kanals of his agricultural land bearing khasra no. 11//8/1, 19//11, 19//12 and 19//13 in village Khera Khurd with State Bank of Patiala to avail a loan of Rs. 1, 98,000/-. He obtained a certified copy of the mortgage deed and found out that respondent no. 1-Babu Ram had presented himself as the applicant to avail the said loan. On finding a prima facie case, charges under Section 420, 467, 468 and 471 of Indian Penal Code was framed against the accused, to which they pleaded not guilty and claimed trial.

3. The prosecution examined as many as 10 witnesses to establish its case. The respective statement of the accused under Section 313 of the Cr.P.C. recorded wherein they denied all the incriminating evidence put to them and claimed false implication but did not examine any witnesses in their defence.

4. On assessing the material available on record, the learned trial Court vide judgment and dated 29.10.2004 convicted and sentenced the respondents-accused under Sections 467, 468 read with 34 of the IPC. Aggrieved by the judgment of conviction, the petitioners-accused preferred an appeal before the learned lower Appellate Court which was partly allowed vide judgment dated 08.08.2012 and the respondents-accused were also found guilty for committing an offence under Section 471 read with 34 of the IPC.

5. Learned counsel for the petitioner contends that the learned Courts below fell into error by not convicting the respondents-accused for offence committed under Section 420 of the IPC. Further, the learned Courts below have taken a lenient view with respect to quantum of sentence of the respondents-accused for offences under Section 467, 468 and 471 of the IPC and the same is liable to be enhanced.

6. Having heard the learned counsel for the parties and after perusing the record with their able assistance, this Court would like to examine the necessary ingredients constituting the offence of as defined under Section 420 IPC:

Section 420: Cheating and dishonestly inducing delivery of property.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

7. A two Judge bench of the Hon'ble Supreme Court in Criminal Appeal No. 335 of 2014 titled as ***Mariam Fasihuddin & Another Vs. State by Adugodi Police Station and Another***, decided on 22.01.2024, speaking through Justice Surya Kant, made the following observations:

“11. It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and

dishonest intention must exist from the inception when the promise or representation was made.”

The accused availed a loan of Rs. 1,98,000/- from State Bank of Patiala, Jagadhri by misrepresenting himself as the petitioner and mortgaging his land. The said loan was also repaid by them even before the lodging of the instant complaint by the petitioner. However, the complainant was not dishonestly induced by the respondents-accused to deliver any property and it is the bank who has been cheated, not the petitioner. Hence, the ingredients for the offence of Section 420 as defined in the IPC are not made out.

8. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned trial Court or the learned lower Appellate Court which warrants interference by this Court. As such, in view of the above discussion, the present petition is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

09.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>